

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD WANNEMACHER,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

CARRINGTON MORTGAGE
SERVICES, LLC,

Defendant.

CASE NO. SACV 12-02016 FMO
(ANx)

[PROPOSED]
CONFIDENTIALITY ORDER

1 For good cause shown, pursuant to stipulation of the parties,

2 **IT IS HEREBY ORDERED THAT:**

3 1. PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve
 5 production of confidential, proprietary, sensitive, or private information for which
 6 special protection from public disclosure and from use for any purpose other than
 7 prosecuting this litigation may be warranted. Accordingly, the parties hereby
 8 stipulate to and petition the court to enter the following Confidentiality Order. The
 9 parties acknowledge that this Order does not confer blanket protections on all
 10 disclosures or responses to discovery and that the protection it affords from public
 11 disclosure and use extends only to the limited information or items that are entitled
 12 to confidential treatment under the applicable legal principles. The parties further
 13 acknowledge, as set forth in Section 12.3, below, that this Confidentiality Order
 14 does not entitle them to file confidential information under seal; Civil Local Rule
 15 79-5 sets forth the procedures that must be followed and the standards that will be
 16 applied when a party seeks permission from the court to file material under seal.

17 2. DEFINITIONS

18 2.1 Challenging Party: a Party or Non-Party that challenges the
 19 designation of information or items under this Order.

20 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
 21 how it is generated, stored or maintained) or tangible things that qualify for
 22 protection under Federal Rule of Civil Procedure 26(c).

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House
 24 Counsel (as well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or
 26 items that it produces in disclosures or in responses to discovery as
 27 "CONFIDENTIAL."
 28

1 2.5 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.6 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this action.

8 2.7 House Counsel: attorneys who are employees of a party to this action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.8 Non-Party: any natural person, partnership, corporation, association,
12 or other legal entity not named as a Party to this action.

13 2.9 Outside Counsel of Record: attorneys who are not employees of a
14 party to this action but are retained to represent or advise a party to this action and
15 have appeared in this action on behalf of that party or are affiliated with a law firm
16 which has appeared on behalf of that party.

17 2.10 Party: any party to this action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this action.

22 2.12 Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.13 Protected Material: any Disclosure or Discovery Material that is
27 designated as "CONFIDENTIAL."
28

1 2.14 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.
9 However, the protections conferred by this Stipulation and Order do not cover the
10 following information: (a) any information that is in the public domain at the time
11 of disclosure to a Receiving Party or becomes part of the public domain after its
12 disclosure to a Receiving Party as a result of publication not involving a violation
13 of this Order, including becoming part of the public record through trial or
14 otherwise; and (b) any information known to the Receiving Party prior to the
15 disclosure or obtained by the Receiving Party after the disclosure from a source
16 who obtained the information lawfully and under no obligation of confidentiality to
17 the Designating Party. Any use of Protected Material at trial shall be governed by a
18 separate agreement or order.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition shall be
23 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
24 or without prejudice; and (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
26 including the time limits for filing any motions or applications for extension of time
27 pursuant to applicable law.

28 5. DESIGNATING PROTECTED MATERIAL

1 5.1 Exercise of Restraint and Care in Designating Material for Protection.

2 Each Party or Non-Party that designates information or items for protection under
 3 this Order must take care to limit any such designation to specific material that
 4 qualifies under the appropriate standards. The Designating Party must designate for
 5 protection only those parts of material, documents, items, or oral or written
 6 communications that qualify – so that other portions of the material, documents,
 7 items, or communications for which protection is not warranted are not swept
 8 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
 9 designations are prohibited.

10 If it comes to a Designating Party's attention that information or items
 11 that it designated for protection do not qualify for protection, that Designating Party
 12 must promptly notify all other Parties that it is withdrawing the mistaken
 13 designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
 15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
 16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 17 under this Order must be clearly so designated before the material is disclosed or
 18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic
 21 documents, but excluding transcripts of depositions or other pretrial or trial
 22 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
 23 page that contains protected material. If only a portion or portions of the document
 24 qualifies for protection, the Producing Party also must clearly identify the protected
 25 portion(s).

26 A Party or Non-Party that makes original documents or
 27 materials available for inspection need not designate them for protection until after
 28 the inspecting Party has indicated which material it would like copied and

1 produced. During the inspection and before the designation, all of the material
 2 made available for inspection shall be deemed "CONFIDENTIAL." After the
 3 inspecting Party has identified the documents it wants copied and produced, the
 4 Producing Party must determine which documents, or portions thereof, qualify for
 5 protection under this Order. Then, before producing the specified documents, the
 6 Producing Party must affix the "CONFIDENTIAL" legend to each page that
 7 contains Protected Material. If only a portion or portions of the document qualifies
 8 for protection, the Producing Party also must clearly identify the protected
 9 portion(s).

10 (b) for testimony given in deposition or in other pretrial or trial
 11 proceedings, that the Designating Party identify on the record, before the close of
 12 the deposition, hearing, or other proceeding, all protected testimony.

13 (c) for information produced in some form other than documentary
 14 and for any other tangible items, that the Producing Party affix in a prominent place
 15 on the exterior of the container or containers in which the information or item is
 16 stored the legend "CONFIDENTIAL." If only a portion or portions of the
 17 information or item warrant protection, the Producing Party, to the extent
 18 practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 20 failure to designate qualified information or items does not, standing alone, waive
 21 the Designating Party's right to secure protection under this Order for such
 22 material. Upon timely correction of a designation, the Receiving Party must make
 23 reasonable efforts to assure that the material is treated in accordance with the
 24 provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 27 designation of confidentiality at any time. Unless a prompt challenge to a
 28 Designating Party's confidentiality designation is necessary to avoid foreseeable,

1 substantial unfairness, unnecessary economic burdens, or a significant disruption or
2 delay of the litigation, a Party does not waive its right to challenge a confidentiality
3 designation by electing not to mount a challenge promptly after the original
4 designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process by providing written notice of each designation it is challenging
7 and describing the basis for each challenge. To avoid ambiguity as to whether a
8 challenge has been made, the written notice must recite that the challenge to
9 confidentiality is being made in accordance with this specific paragraph of the
10 Confidentiality Order. The parties shall attempt to resolve each challenge in good
11 faith and must begin the process by conferring directly (in voice to voice dialogue;
12 other forms of communication are not sufficient) within 14 days of the date of
13 service of notice. In conferring, the Challenging Party must explain the basis for its
14 belief that the confidentiality designation was not proper and must give the
15 Designating Party an opportunity to review the designated material, to reconsider
16 the circumstances, and, if no change in designation is offered, to explain the basis
17 for the chosen designation. A Challenging Party may proceed to the next stage of
18 the challenge process only if it has engaged in this meet and confer process first or
19 establishes that the Designating Party is unwilling to participate in the meet and
20 confer process in a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
22 court intervention, the Challenging Party may file a motion to challenge the
23 confidentiality designation under Civil Local Rule 37 (and in compliance with Civil
24 Local Rule 79-5, if applicable) at any time. Each such motion must be
25 accompanied by a competent declaration affirming that the movant has complied
26 with the meet and confer requirements imposed in the preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on
28 the Designating Party. All parties shall continue to afford the material in question

1 the level of protection to which it is entitled under the Producing Party's
 2 designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 5 disclosed or produced by another Party or by a Non-Party in connection with this
 6 case only for prosecuting, defending, or attempting to settle this litigation. Such
 7 Protected Material may be disclosed only to the categories of persons and under the
 8 conditions described in this Order. When the litigation has been terminated, a
 9 Receiving Party must comply with the provisions of section 13 below (FINAL
 10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party
 12 at a location and in a secure manner that ensures that access is limited to the
 13 persons authorized under this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 15 otherwise ordered by the court or permitted in writing by the Designating Party, a
 16 Receiving Party may disclose any information or item designated
 17 "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action,
 19 as well as employees of said Outside Counsel of Record to whom it is reasonably
 20 necessary to disclose the information for this litigation and who have signed the
 21 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
 22 Exhibit A;

23 (b) the officers, directors, and employees (including House
 24 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
 25 litigation and who have signed the "Acknowledgment and Agreement to Be
 26 Bound" (Exhibit A);

27 (c) Experts (as defined in this Order) of the Receiving Party to
 28 whom disclosure is reasonably necessary for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (d) the court and its personnel;

3 (e) court reporters and their staff, professional jury or trial
4 consultants, mock jurors, and Professional Vendors to whom disclosure is
5 reasonably necessary for this litigation and who have signed the “Acknowledgment
6 and Agreement to Be Bound” (Exhibit A);

7 (f) during their depositions, witnesses in the action to whom
8 disclosure is reasonably necessary and who have signed the “Acknowledgment and
9 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
10 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
11 to depositions that reveal Protected Material must be separately bound by the court
12 reporter and may not be disclosed to anyone except as permitted under this
13 Confidentiality Order.

14 (g) the author or recipient of a document containing the information
15 or a custodian or other person who otherwise possessed or knew the information.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
17 IN OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other litigation
19 that compels disclosure of any information or items designated in this action as
20 “CONFIDENTIAL,” that Party must:

21 (a) promptly notify in writing the Designating Party. Such
22 notification shall include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or
24 order to issue in the other litigation that some or all of the material covered by the
25 subpoena or order is subject to this Confidentiality Order. Such notification shall
26 include a copy of this Confidentiality Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be
28 pursued by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served with
2 the subpoena or court order shall not produce any information designated in this
3 action as "CONFIDENTIAL" before a determination by the court from which the
4 subpoena or order issued, unless the Party has obtained the Designating Party's
5 permission. The Designating Party shall bear the burden and expense of seeking
6 protection in that court of its confidential material – and nothing in these provisions
7 should be construed as authorizing or encouraging a Receiving Party in this action
8 to disobey a lawful directive from another court.

9 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
10 PRODUCED IN THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced
12 by a Non-Party in this action and designated as "CONFIDENTIAL." Such
13 information produced by Non-Parties in connection with this litigation is protected
14 by the remedies and relief provided by this Order. Nothing in these provisions
15 should be construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery
17 request, to produce a Non-Party's confidential information in its possession
18 (excluding a Non-Party who may be an unnamed member of the putative class), and
19 the Party is subject to an agreement with the Non-Party not to produce the Non-
20 Party's confidential information, then the Party shall:

21 (1) promptly notify in writing the Requesting Party and the Non-Party that
22 some or all of the information requested is subject to the confidentiality agreement
23 with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Confidentiality
25 Order in this litigation, the relevant discovery request(s), and a reasonably specific
26 description of the information requested; and

27 (3) make the information requested available for inspection by the Non-
28 Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely objects or seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

(d) The Parties agree that the provisions of sections 9(b) and 9(c) above are in addition to, and are not intended to supersede, whatever other confidentiality protections, if any, may be afforded under state or federal law to a Non-Party's confidential information in the possession of a Party. Nothing in this Confidentiality Order purports to alter in any respect such protections, if any, afforded under state or federal law, regardless of whether those protections are supplemental to or inconsistent with the protections and procedures set forth herein. Defendant maintains that the notice and consent procedures set forth in *Pioneer Electronics (USA), Inc. v. Superior Court*, 150 P.3d 198 (Cal. 2007) and other cases apply to unnamed members of the purported class. Plaintiff disagrees. If the parties cannot resolve this dispute through the meet and confer process, they will submit it to the Court as soon as practicable.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Confidentiality Order, the Receiving Party must immediately (a) notify in writing

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 the Designating Party of the unauthorized disclosures, (b) use its best efforts to
 2 retrieve all unauthorized copies of the Protected Material, (c) inform the person or
 3 persons to whom unauthorized disclosures were made of all the terms of this Order,
 4 and (d) request such person or persons to execute the "Acknowledgment and
 5 Agreement to Be Bound" that is attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
 9 inadvertently produced material is subject to a claim of privilege or other
 10 protection, the obligations of the Receiving Parties are those set forth in Federal
 11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 12 whatever procedure may be established in an e-discovery order that provides for
 13 production without prior privilege review. Pursuant to Federal Rules of
 14 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
 15 disclosure of a communication or information covered by the attorney-client
 16 privilege or work product protection, the parties may incorporate their agreement in
 17 the confidentiality order submitted to the court.

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 20 person to seek its modification by the court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 22 Confidentiality Order no Party waives any right it otherwise would have to object
 23 to disclosing or producing any information or item on any ground not addressed in
 24 this Confidentiality Order. Similarly, no Party waives any right to object on any
 25 ground to use in evidence of any of the material covered by this Confidentiality
 26 Order.

27 12.3 Filing Protected Material. Without written permission from the
 28 Designating Party or a court order secured after appropriate notice to all interested

1 persons, a Party may not file in the public record in this action any Protected
2 Material. A Party that seeks to file under seal any Protected Material must comply
3 with Civil Local Rule 79-5. Protected Material may be filed under seal only
4 pursuant to a court order authorizing the sealing of the specific Protected Material
5 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
6 request establishing that the Protected Material at issue is privileged, protectable as
7 a trade secret, or otherwise entitled to protection under the law. If a Receiving
8 Party's request to file Protected Material under seal pursuant to Civil Local
9 Rule 79-5.1 is denied by the court, then the Receiving Party may file the
10 information in the public record pursuant to Civil Local Rule 79-5.3 unless
11 otherwise instructed by the court.

12 13. FINAL DISPOSITION

13 Within 60 days after the final disposition of this action, as defined in
14 paragraph 4, each Receiving Party must return all Protected Material to the
15 Producing Party or destroy such material. As used in this subdivision, "all
16 Protected Material" includes all copies, abstracts, compilations, summaries, and any
17 other format reproducing or capturing any of the Protected Material. Whether the
18 Protected Material is returned or destroyed, the Receiving Party must submit a
19 written certification to the Producing Party (and, if not the same person or entity, to
20 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
21 appropriate) all the Protected Material that was returned or destroyed and
22 (2) affirms that the Receiving Party has not retained any copies, abstracts,
23 compilations, summaries or any other format reproducing or capturing any of the
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
25 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
26 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
27 reports, attorney work product, and consultant and expert work product, even if
28 such materials contain Protected Material. Any such archival copies that contain or

1 constitute Protected Material remain subject to this Confidentiality Order as set
2 forth in Section 4 (DURATION).

3 **IT IS SO ORDERED.**

4
5 DATED: July 15, 2013

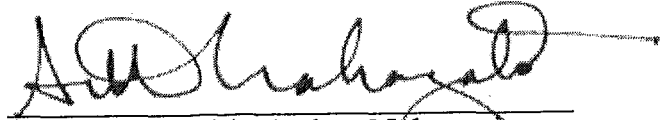

Honorable Arthur Nakazato
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on [date] in the case of *Wannemacher v. Carrington Mortgage Services, LLC*, Case
 No. SA CV 12-02016 FMO (ANx). I agree to comply with and to be bound by all
 the terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to any person
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]